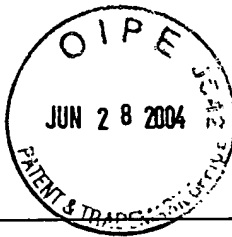




UNIVERSITY OF  
FLORIDA



Institute of Food and Agricultural Sciences  
Gulf Coast Research and Education Center-Dover  
Web site: [strawberry.ifas.ufl.edu](http://strawberry.ifas.ufl.edu)

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Suncom 512-1160(1) ext. 70  
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email: [ckc@ufl.edu](mailto:ckc@ufl.edu)

May 20, 2004

Michelle Kizilkaya  
U.S. Patent Examiner

Dear Ms. Kizilkaya:

In reference to plant patent application number 10/613,317, I believe that I have been able to address the shortcomings of the disclosure as stated in items A-D on page 4 of your office communication dated 3/24/2004, except for item C. Unfortunately, FL 93-53 was discarded back in the mid 1990s, shortly after using it as a parent, and we don't have any detailed records of its characteristics.

Sincerely,

Craig K. Chandler  
Professor

17w  
**FLORIDA FOUNDATION SEED PRODUCERS, INC.**

CHARTERED BY THE STATE OF FLORIDA AS A NON-PROFIT CORPORATION TO INCREASE AND DISTRIBUTE  
FLORIDA EXPERIMENT STATION BREEDER SEED

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GREENWOOD, FLORIDA 32443  
TELEPHONE: 850-594-4721



3913 Hwy 71  
FAX: 850-594-1068  
seed@digitalexp.com

June 22, 2004

Michelle Kizilkaya  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RE: Application No.	10/613,317
Filing Date	07/07/04
First Named Inventor	Craig K. Chandler
Confirmation No.	4837
Art Unit	1661

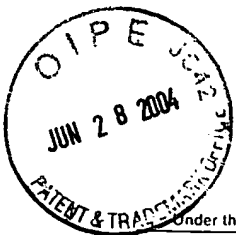
I am enclosing the revised write up along with a marked up copy. We have attempted to clarify all objections. Enclosed is a letter from Dr. Craig K. Chandler and a Certificate of Mailing under 37 CFR 1.8.

Sincerely,

Thomas D. Stadslev  
Manager

TDS/kj

Enclosures



PTO/SB92 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031

U. S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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### Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Patents  
Washington, D.C. 20231

on

6-23-04

Date

Signature

Thomas D. Stadskev

Typed or printed name of person of signing Certificate

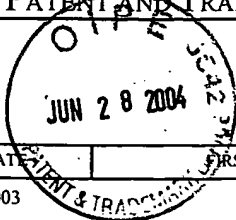
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,317	07/07/2003	Craig K. Chandler		4837

7590

03/24/2004

Thomas D. Stadsklev  
Florida Foundation Seed Producers, Inc.  
P.O. Box 309  
Greenwood, FL 32443

EXAMINER

KIZILKAYA, MICHELLE R

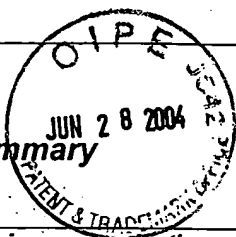
ART UNIT PAPER NUMBER

1661

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**



Application No.

10/613,317

Applicant(s)

CHANDLER, CRAIG K.

Examiner

Kizilkaya Michelle

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 7/7/03
- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### **Objection to the Disclosure**

#### **37CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of the plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and the character of the area where the plant was discovered.

#### **35 USC 112**

The following is a quotation of the first paragraph of 35 USC 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out the invention.

The following is a quotation of the second paragraph of 35 USC 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to the United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics.

More than one claim is not permitted.

In plant applications filed under 35 USC 161, the requirements of 35 USC are limited. The following is a quotation of 35 USC 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) and 35 U.S.C. 112, first paragraph because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

- A. Applicant must set forth the scientific binomial in the proper format at the top of the specification, under a separate heading. Also, the hybrid X should appear in capital form and neither italicized nor underlined.
- B. Applicant should set forth the patent status of all cultivars set forth in the application by providing the US Plant Patent number if applicable or by inserting the phrase --(not patented)--.
- C. Applicant should provide comparisons of the instant plant to both parents as well as another known cultivar from the same market class.
- D. Applicant should set forth the age and the environmental conditions of the plant depicted in the drawing in the description of the drawings. Also, applicant should set forth the age of the plants described in the detailed botanical description.



The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical description set forth in the specification to ensure the completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to the same.

**Claim Rejections**

**35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> Paragraphs**

Claim 1 is rejected under 35 USC 112, first and second paragraphs as not being supported by clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

**Future Correspondence**

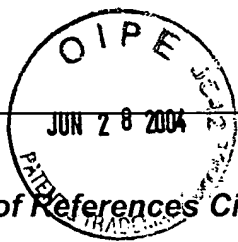
Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Kizilkaya whose telephone number is (571) 272-0978. The examiner can normally be reached Monday-Friday from 9:00 am to 5:30 pm.

If attempts to reach examiner by telephone are unsuccessful, examiner's supervisor, Bruce Campell, can be reached at (571) 272-4205. The fax number for the group is (703) 305-3041 Or 308-4242.

Any inquiry of a general nature relating to the status of the application should be directed to the Matrix Customer Service Center whose telephone number is (703) 308-0196.

A handwritten signature in cursive script that reads "Bruce Campell".

BRUCE R. CAMPPELL, PH.D  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

**Notice of References Cited**

Application/Control No.

10/613,317

Applicant(s)/Patent Under  
Reexamination  
CHANDLER, CRAIG K.

Examiner

Kizilkaya Michelle

Art Unit

1661

Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-			
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.